

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

Lori Carrier and  
Valerie Whitman

v.

Civil No. 05-cv-430-JD

American Bankers Life  
Assurance Co. of Florida

O R D E R

The plaintiffs have filed a motion titled "Plaintiffs' Motion for Order Concerning Eventual Classwide Discovery." In the motion they explain that they are seeking to "clarify how this case would proceed as a class action." They ask the court to consider this motion in conjunction with their pending motion for class certification and declare that if a class is certified, American Bankers Life Assurance Co. of Florida "may be ordered to produce early loan payoff dates." American Bankers objects to the motion and asks that it be stricken, noting that the plaintiffs do not seek relief and instead filed the motion as unauthorized additional briefing to support their class certification motion.

In their motion, the plaintiffs argue that American Bankers has possession of or has control of information about early loan payoffs that they contend will be "necessary to refund the unearned credit insurance premiums it owes to its former

insureds." They further contend that the court can, at an appropriate time in the future but not now, order American Bankers to gather and produce the loan cancellation dates to help the plaintiffs identify the class members and to calculate damages. The plaintiffs threaten that if American Bankers does not willingly produce this information and if the court "refuses to compel it to do so, then class counsel will obtain the early payoff dates through the Rule 45 subpoena process, in which even [sic] they may seek an order compelling Defendant to reimburse them for their reasonable costs expensed [sic] in doing so."

No class has been certified in this case. Any motion to compel discovery premised on the existence of a class being certified is premature and speculative. Federal courts do not issue advisory opinions on such matters. Igartua-De La Rosa v United States, 417 F.3d 145, 153 (1st Cir. 2005); Acevedo-Garcia v. Monroig, 351 F.3d 547, 572 (1st Cir. 2003).

American Bankers asks that the motion be stricken for failure to conform to the local rules and as unauthorized additional briefing on class certification. Under Federal Rule of Civil Procedure 12(f) a motion may be stricken only in specified circumstances. Because American Bankers did not move to strike the plaintiffs' motion as provided in Rule 12(f), that relief is not considered.

Conclusion

For the foregoing reasons, the plaintiffs' motion for an order on eventual class discovery (document no. 52) is denied, and its contents will not be considered for any purpose in this case.

SO ORDERED.

/s/Joseph A. DiClerico, Jr.  
Joseph A. DiClerico, Jr.  
United States District Judge

August 6, 2007

cc: Frank Burt, Esq.  
James E. Butler, Jr., Esq.  
Kate S. Cook, Esq.  
Wilbur A. Glahn, III, Esq.  
Farrokh Jhabvala, Esq.  
Edward K. O'Brien, Esq.  
Joel O. Wooten, Jr., Esq.